

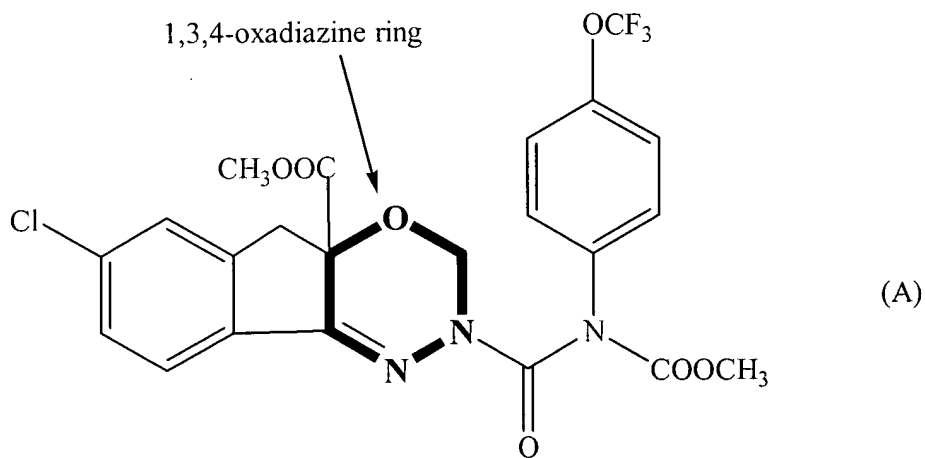
REMARKS

Claims 1-9 are currently pending in the instant application.

In the Office Action, the Examiner rejects claims 1-9 under 35 U.S.C. §102(a), as being anticipated by U.S. Patent Application Publication No. 2002/0115565 of Asrar, *et al.* ("Asrar"). The Examiner contends that Asrar discloses a method of controlling pests with an insecticidal composition which comprises an oxadiazine derivative and a pyrethroid compound, namely imiprothrin. The Examiner acknowledges that Asrar fails to disclose indoxacarb as a suitable oxadiazine derivative for use in the disclosed insecticidal composition. However, the Examiner argues that "one of ordinary skill in the art would immediately envision indoxacarb as an insecticidal oxadiazine derivative [suitable for use in Asrar]." (*See*, the Office Action, page 4). In support of this alleged ability of one of ordinary skill in the art to "immediately envision" indoxacarb as a suitable oxadiazine derivative, the Examiner cites an Internet posting of the Compendium of Pesticide Common Names, as found on August 24, 2005, at http://web.archive.org/web/20020625100627/http://www.alanwood.net/pesticide/class_insecticides.html. On this basis, the Examiner argues that the claims are anticipated.

Applicant strenuously, but respectfully, traverses the Examiner's rejection and the arguments and contentions set forth in support thereof for the following reasons.

To begin with, Applicant's claimed invention is directed to a pesticidal composition which comprises an oxadiazine compound given by the claimed formula (A) and an ester compound given by the claimed formula (B). An oxadiazine compound of formula (A) comprises a 1,3,4-oxadiazine ring as part of a fused tricyclic structure.



The Examiner has argued that one of ordinary skill in the art would immediately envision indoxacarb (*i.e.*, a compound of formula (A)), as an insecticidal oxadiazine derivative suitable for use in the disclosure of Asrar. Applicant respectfully disagrees and submits that the Examiner's interpretation of the teachings of Asrar is incorrect, or at best, unduly expansive.

Oxadiazine is an extremely broad term of nomenclature encompassing any heterocyclic ring structure having two nitrogen atoms and one oxygen atom. Additionally, there are several divergent classes of insecticides which include heterocyclic ring structures having two nitrogen atoms and one oxygen atom. As one would expect from such divergent classification, these separate types of insecticides function differently and are categorized accordingly, despite having the purported "similarity" of possessing an oxadiazine ring within their structures.

In contrast to Applicant's claimed invention, all of the oxadiazine *derivatives* disclosed in Asrar are of the insecticide class known as neonicotinoids. Neonicotinoids are a well-known class of pesticidal compositions having one of the structures identified as formulae (1), (2) and/or (3) in U.S. Patent No. 6,201,017 of Sembo, *et al.* ("Sembo '017"), a copy of which is enclosed for the Examiner's convenience. Applicant has also attached a PTO-Form 1449 listing the Sembo '017 reference, again for the Examiner's convenience, should the Examiner choose to make the reference of record in this application. As can be seen from formulae (1), (2) and (3) set forth in columns 1 and 2 of Sembo '017, neonicotinoids are based on a 1,3,5-oxadiazine ring structure, but nonetheless, they function via a different mechanism and are separately classified by those skilled in the insecticidal arts. (*See*, Sembo '017, column 3, lines 1-9).

It is respectfully submitted, based upon the extremely broad nature of the term "oxadiazine" as used with respect to insecticides, that one of ordinary skill in the art would be required to look to the disclosure of Asrar to ascertain what was actually meant by "oxadiazine derivative". Upon closer inspection of Asrar, as can be seen from Paragraph [0036] thereof, the oxadiazine derivatives disclosed therein are, in fact, all *1,3,5-oxadiazine derivatives*, NOT 1,3,4-oxadiazine compounds of formula (A), as claimed. In other words, the oxadiazines disclosed by Asrar are all of the neonicotinoid class of insecticides. In fact, there is not a single mention in

Asrar of any 1,3,4-oxadiazine derivatives such as indoxacarb. Moreover, not one of the 825 examples set forth in Asrar discloses indoxacarb as a suitable oxadiazine derivative. In all reasonable likelihood, this is because the oxadiazines contemplated by Asrar are all of the neonicotinoid class of insecticides.

Furthermore, Applicant respectfully notes that even the Examiner-cited Compendium of Pesticide Common Names lists indoxacarb separately from all of the nicotinoid insecticides (shown on page 4 of 11 thereof). Among the nicotinoid pesticides specifically identified in the Compendium is thiamethoxam which is a 1,3,5-oxadiazine derivative. A copy of the entry for thiamethoxam from the 13th Edition of The Pesticide Manual is also attached for the Examiner's convenience, and is listed on the attached Form-PTO 1449. As indicated in the attached entry from The Pesticide Manual, thiamethoxam is a 1,3,5-oxadiazine derivative which is classified as a neonicotinoid. On the other hand, as shown in The Pesticide Manual entry for indoxacarb (a copy of which is also attached), that compound is a 1,3,4-oxadiazine and is thus separately classified.

Accordingly, Applicant respectfully submits that one of ordinary skill in the art would in no way "immediately envision" indoxacarb as a suitable oxadiazine insecticide for use in the disclosure of Asrar as a replacement for the disclosed neonicotinoid oxadiazine derivatives. Reconsideration and withdrawal of the rejection based upon Asrar is respectfully requested.

In the Office Action, the Examiner rejects claims 1-9 under 35 U.S.C. §102(b), as being anticipated by U.S. Patent No. 6,218,416 of Sembo ("Sembo '416"). The Examiner contends that Sembo '416 discloses a method of controlling agricultural pests with a pesticidal composition comprising a guanidine derivative, an oxadiazine compound, a pyrethroid compound. The Examiner further contends that the oxadiazine compound is indoxacarb and that the pyrethroid compound is imiprothrin. Finally, the Examiner contends that the ratio of indoxacarb to imiprothrin is within the range of 98:1 to 1:98, which allegedly encompasses the claimed ranges.

Applicant respectfully traverses the Examiner's rejection and the arguments and contentions set forth in support thereof for the following reasons.

Contrary to the Examiner's assertions, Sembo '416 is directed to compositions which include a guanidine compound and imiprothrin. There is no specific disclosure of any composition comprising imiprothrin and indoxacarb, as a pesticide. Rather, in a tangential manner, Sembo '416 discloses that the compositions *comprising a guanidine compound and imiprothrin*, may include an additional ingredient or synergist. Suitable additional ingredients or synergists include pest *repellants* which may include, among many other possibilities, indoxacarb.

However, nowhere in Sembo '416 is the amount of indoxacarb which may be included in the compositions disclosed. In fact, the only mention of indoxacarb is as a pest repellent. It is respectfully submitted that inclusion of indoxacarb in a pest-repellent amount is not the same as a pesticidal amount. Thus, Sembo '416 fails to teach a *pesticidal* composition comprising a compound of formula (A) and a compound of formula (B).

Accordingly, Applicant respectfully submits that Sembo '416 fails to anticipate the claimed invention. Reconsideration and withdrawal of the rejection are respectfully requested.

Application No. 10/770,886
Reply to Office Action of September 9, 2005

In view of the remarks set forth above, Applicant respectfully submits that all claims patentably distinguish over the prior art of record and known to Applicant. Reconsideration, withdrawal of all rejections and a Notice of Allowance are respectfully requested.

Respectfully submitted,

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(Date)

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Enclosure – Form PTO/SB/08A with copies of references